IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10988 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHU @ JASHODABEN DAHYABHAI SHANKERBHAI TANDEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10988 of 2004

MR ZUBIN F BHARDA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Zubin Bharda for the petitioner who is a lady detenu. By this petition under

Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner who is a lady detenu has challenged the legality and validity of the order of detention dated 20.05.2004 passed by the District Magistrate, Navsari, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that the detenu was found involved in two offences punishable under Sections 66B, 65AE,81 116(2) of the Bombay Prohibition Act, both registered at Jalalpore Police Station being CR Nos. 2285/2003 and 234/2004. The detenu has been detained on the ground that her activities are found prejudicial to the maintenance of public health and of public order. There is a gap of more than 4 months between two offences registered. No statements of any independent witnesses were there before the detaining authority in the papers submitted by the sponsoring machinery.

3. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Mr. Patel for the petitioner, has taken this Court through the contentions raised in the petition. However, he has focussed his arguments mainly on the ground that her alleged involvement in two different offences ought not to have been considered as threat to maintenance of public order. The order is passed on the bald statement and there is no material for the alleged bootlegging activities of the petitioner. The second ground raised by the ld. counsel Mr. Bharda for the petitioner is that the order is not sustainable because of the delay caused in passing the order of detention. This Court, in such or similar cases, has considered the date of registration of last case as a relevant date. In the instant case, the last case i.e. 2nd case was registered against the detenu on 03.03.2004 and the order of detention is passed on 20.05.2004. So, it was possible for the sponsoring authority to place relevant papers before the detaining authority at the earliest if really preventive measures were required tobe taken immediately. In the present case, after her arrest,she was chargesheeted on 13.03.2004, but the sponsoring authority had sent papers vide communication dated 13.04.2004. So, practically, one month was taken by the sponsoring authority. Though papers were received by the office of

the detaining authority on 15.04.2004, as per reply affidavit, the order of detention is passed on 20.05.2004 i.e. after a period of about 1 month and 5 days. The Court is not satisfied with the explanation given by the ld. District Magistrate for not passing the order of detention in couple of hours or days after receipt of the papers from sponsoring machinery. Unexplained delay of one month by sponsoring machinery and rest of the period of above one month by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, on both these grounds, petition requires to be allowed.

4. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 20.05.2004 passed by the District Magistrate, Navsari is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if she is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]
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